

REMARKS

Applicant notes that all amendments and cancellations of Claims presented herein are made without acquiescing to any of the Examiner's arguments or rejections, and solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals (PBG),¹ and without waiving the right to prosecute the amended or cancelled Claims (or similar Claims) in the future. None of the claim amendments made herein are intended to narrow the scope of any of the amended claims within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) or related cases.

Claims 1-2, 4, 6-11 and 18-21 are pending in the present application. Claims 3 and 5 have been cancelled without prejudice. Claims 1, 2, 4, 6, 7, 8, 9, 10 and 18 have been amended. The claims have been amended to address the indefiniteness rejections and the objection based on formalities. Support for these amendments may be found throughout the specification and in particular in the specification in Examples 1 and 3.

1. Claims 1-3, 6, and 7 are rejected under 35 U.S.C. §101 as directed to non-statutory subject matter;
2. Claims 1-11 and 18-21 are rejected under 35 U.S.C. §112, second paragraph as allegedly being nonenabled;
3. Claims 1-4, 6, 7, 10, and 18-21 are rejected under 35 U.S.C. §102(b) as allegedly anticipated under 35 U.S.C. 102(b) by Multhoff (WO 02/22656);
4. Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Multhoff (WO 02/22656) in further view of Adair et al. (WO 91/16928).

These rejections are addressed in order below.

¹ 65 Fed. Reg. 54603 (Sept. 8, 2000).

1. The 35 U.S.C. §101 rejection is moot

Claims 1-3, 6, and 7 are rejected under 35 U.S.C. §101 as directed to non-statutory subject matter. The claims have been amended as suggested by the Examiner to refer to “isolated” antibodies. Applicant respectfully requests that this rejection be withdrawn.

2. The claims are definite

Claims 1-11 and 18-21 are rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. “The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification.” *Miles Laboratories, Inc. v. Shandon, Inc.*, 997 F.2d 870, 875 (Fed. Cir. 1993). Claims are in compliance with 35 U.S.C. § 112, second paragraph, if “the claims, read in light of the specification, reasonably apprise those skilled in the art and are as precise as the subject matter permits.” *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1385 (Fed. Cir. 1987). Applicant respectfully submits that a person of skill in the art, upon reading the specification, would understand Hsp70 refers to Heat Shock Protein 70, and that Hsp70 can be membrane bound. The Examiner fails to explain why simply because multiple laboratories may have different names for a protein or nucleic acid, the use of one of those names is indefinite. Nevertheless, Applicant has amended the claims to spell out the acronym and also included the reference to the epitope SEQ ID NOs. to more clearly define the claims. Accordingly, Applicant requests that this rejection be withdrawn.

3. The claims are not anticipated

Claims 1-4, 6, 7, 10, and 18-21 are rejected under 35 U.S.C. §102(b) as allegedly anticipated under 35 U.S.C. 102(b) by Multhoff (WO 02/22656). Claim 1 has been amended to incorporate the limitations of original Claim 5, now cancelled, which was not subject to the anticipation rejection. Dependent claims that depend on an independent claim that is not anticipated are also not anticipated. Accordingly, the claims as amended

are not anticipated and Applicant respectfully requests that this amendment be withdrawn.

4. The claims are not obvious

Claims 8 and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Multhoff (WO 02/22656) in further view of Adair et al. (WO 91/16928). Claim 1 has been amended to incorporate the limitations of original Claim 5, now cancelled, which was not subject to an anticipation or obviousness rejection. Claims 8 and 9 depend on Claim 1. Accordingly, Applicant respectfully submits that a prima facie case of obviousness has not been established for Claims 1, 8 and 9 as amended. Applicant respectfully requests that this ground of rejection be withdrawn.

CONCLUSION

All grounds of rejection and objection of the Office Action of April 15, 2009 having been addressed, reconsideration of the application is respectfully requested. It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

Respectfully submitted,

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